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FEDERAL COMMUNICATIONS COMMISSION
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BY HAND

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: *WorldCom, Cox, and AT&T v. Verizon*
CC Docket Nos. 00-218, 00-249, and 00-251

Dear Ms. Dortch:

Enclosed for filing please find four copies of Verizon Virginia Inc.'s ("Verizon VA") Reply to Oppositions of Worldcom Inc. and AT&T Communications of Virginia LLC to Verizon Virginia Inc.'s Motion to Permit Parties to Supplement the Record in the above-referenced arbitration proceedings.

Please call Scott Randolph (202-515-2530) or me if you have any questions

Very truly yours,



Samir C. Jain
Attorney for Verizon Virginia Inc.

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CC Docket No. 00-218

CC Docket No. 00-249

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Pursuant to rule 1.45, Verizon Virginia Inc. (“Verizon”) hereby replies to the oppositions filed by AT&T Communications of Virginia LLC (“AT&T”) and WorldCom Inc. (“WorldCom”) to Verizon’s Motion to Permit Parties to Supplement the Record.

AT&T and WorldCom suggest that Verizon's motion is designed to, and would, produce delay and perpetuate outdated rates. But just the opposite is true. The point of Verizon's motion was precisely to ensure that the rates that the Commission sets in this proceeding will themselves not be outdated and overtaken by relevant legal and market developments at the time they are set, and will instead be based on the best available evidence. And Verizon's motion expressly proposed a limited and expedited schedule specifically to ensure that resolution of this case would not be unnecessarily delayed even while providing parties the opportunity to submit

evidence concerning whatever issues they believe **are** necessary to ensure the accuracy and lawfulness of the rates that the Commission sets.

Nearly 18 months have passed since the parties filed cost studies in this case, and a year has passed since the hearings concluded. Although AT&T and WorldCom assert that nothing of significance to the Commission's decision has occurred in that time period, that claim belies common sense. ~~As Verizon explained in its motion, the telecommunications market clearly has~~ undergone substantial structural changes since the filing of cost studies and the conclusion of the hearings in this matter, and these changes have had a substantial impact on the costs and financial risks associated with providing UNEs. It is equally undisputable that, during the last year, decisions by the courts and the Commission have provided substantial guidance regarding the nature of the TELRIC methodology and the governing legal standards.

AT&T and WorldCom do not deny the existence of the market developments to which Verizon points, but simply dispute the impact of these significant changes on the evidence already in the record. **See, e.g.,** Opp'n of AT&T Communications of Virginia LLC to Mot. of Verizon Virginia Inc. to Supplement the Record ("AT&T Opp'n") at 12; Opp'n of WorldCom, Inc. to Verizon Virginia Inc.'s Mot. to Permit Parties to Supplement the Record ("WorldCom Opp'n") at 4. But this is something the parties should and can expeditiously present and brief to the Commission; the fact that AT&T and WorldCom disagree on how the evidence should be interpreted has no bearing on whether the Commission should itself decide that question on an informed record before setting rates in this case. **As** to the legal developments, while AT&T and WorldCom suggest that the Commission may simply account for those on its own, it is neither unusual nor improper for the parties to present arguments to the Commission concerning how those rulings should guide its decisionmaking, and in this complex matter, any light the parties

can shed on how previous cases or analysis should shape the Commission's decision can only help produce more defensible, legally justifiable rates. It makes plain sense to provide the parties the opportunity to submit evidence and arguments concerning how these factual and legal developments affect the appropriate rates and to remedy any major disparities between the evidence the parties submitted over 17 months ago and the legal and factual reality of today.

~~Indeed, under these circumstances, it may well be considered legal error to not allow the parties~~
an opportunity to address intervening developments. *See, e.g., United Mine Workers of America v. Dole*, 870 F.2d 662, 673 (D.C. Cir. 1989) (reopening of the record is appropriate where — as here — failure to do so would raise serious doubts “about whether the agency chose properly from the various alternatives open to it”).

Finally, as noted above, the expeditious, streamlined schedule proposed by Verizon adequately addresses the Commission's and all parties' desire for a prompt resolution of this proceeding. Limiting the parties to the page limits and deadlines proposed by Verizon would ensure that the parties focus **on** the evidence they think is most critical. Thus, while **AT&T** and **WorldCom** suggest that allowing the parties to submit new evidence will result in the need to revisit every issue **in** the record, (**see AT&T Opp'n at 5; WorldCom Opp'n at 5**), that is neither necessary, nor the intent of Verizon's motion. Quite the contrary — the page limits and time frame Verizon suggests are designed precisely to limit the parties to pointing out the most critical developments, evidence, and analysis for the Commission's review, and not to simply rehash matters that already have been comprehensively addressed.'

¹ **AT&T** and **WorldCom** also protest that Verizon's proposed schedule operates at too rapid a pace. **See AT&T Opp'n at 4; WorldCom Opp'n at 5**. As noted, Verizon's proposed schedule is intentionally abbreviated so as to avoid unnecessary delay and to encourage the parties to focus **on** the most relevant and significant evidence. Should the Commission conclude, however,

In fact, AT&T and WorldCom's objection to Verizon's motion on the ground that supplementation of the record would be too voluminous and involve too much delay is self-contradictory, given their view that there *have* been no developments that warrant updating the record. The latter view belies AT&T's claim that it could not **file** its initial testimony within two weeks of an order by the Commission permitting supplementation of the record. *See* AT&T Opp'n at **4**. WorldCom's position that it ~~could take "thousands of pages" to address the~~ allegedly changed cost data on "every single price component" is similarly inconsistent with the view that nothing critical has changed since the record closed. *See* WorldCom Opp'n at **5**. AT&T and WorldCom cannot have it both ways. Either significant developments have occurred, in which case the FCC would be remiss in not permitting the parties to at least address those that are most critical, or there is little that need be considered at this juncture, in which case the parties could easily comply with Verizon's proposed schedule.

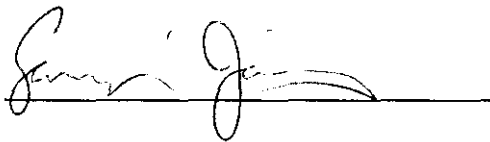
Nor is there any substance to AT&T's and WorldCom's suggestion that Verizon is seeking to limit the subjects on which supplemental evidence and analysis could properly be submitted. *See* AT&T Opp'n at **5**; WorldCom Opp'n at **5**. Verizon's motion set forth examples demonstrating the types of developments that clearly merit updated analysis. There are certainly others, and AT&T and WorldCom undoubtedly have their views **of** what those might be. If the Commission were to grant Verizon's motion, each party could itself decide whether and how to use the limited time period and page allocation to best supplement the record.

Considering the significance of this case, a short period of additional time to permit the parties to supplement the record on top of the more than 17 months that have passed since the

that it would be useful to provide more time for the parties to prepare and respond to testimony and briefs, Verizon is not opposed to the adoption **of** such a schedule.

parties first submitted cost studies in this case is surely justified. Indeed, it would be simply illogical to do otherwise. While, ~~as~~ AT&T and WorldCom suggest, (~~see~~ AT&T Opp'n at 7; WorldCom Opp'n at 4), it is inevitable that rates will not accurately reflect costs during the entire period they are in effect, ~~it~~ makes no ~~sense~~ to set rates that are already outdated and inaccurate *at the moment they are initially set*. Failure to consider evidence and briefing relating to critical legal ~~and~~ factual developments since cost studies were filed and the hearings were completed will result in the issuance of inaccurate and economically invalid rates. Given the enormous significance of these rates, and the fact that they will likely remain in effect for several years, it is crucial ~~that~~ the Commission set accurate and lawful rates based on the best and most relevant evidence available. Accordingly, Verizon asks the Commission to allow the parties a limited opportunity to supplement the record and to consider this relevant cost evidence in determining UNE rates.

Respectfully submitted,



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Dated: December **16, 2002**

Attorneys for Verizon VA

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing Verizon Virginia Inc.'s Reply to Oppositions of Worldcom Inc. and AT&T Communications of Virginia LLC to Verizon Virginia Inc.'s Motion to Permit Parties to Supplement the Record were served electronically and by overnight mail this 16th day of December, 2002, to:

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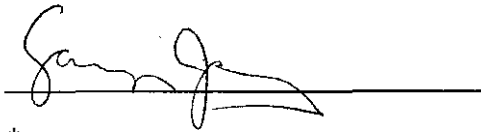
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